

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

)
KEN JOHANSEN, individually)
and on behalf of all others)
similarly situated,)
)
Plaintiffs,)
) Civil Action
v.) No. 15-12920-ADB
)
LIBERTY MUTUAL GROUP, INC.,)
and Spanish Quotes, INC.,)
d/b/a WESPEAKINSURANCE,)
et al,)
)
Defendants.)
)

BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT JUDGE

MOTION HEARING

John J. Moakley United States Courthouse
Courtroom No. 17
One Courthouse Way
Boston, Massachusetts 02210
Friday, May 27, 2016
9:33 a.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 7209
Boston, Massachusetts 02210
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Mechanical Steno - Computer-Aided Transcript

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P R O C E E D I N G S

THE CLERK: All rise.

(The Court enters the courtroom at 9:33 a.m.)

THE COURT: Good morning, everyone.

THE CLERK: Court is in session. You may be seated.

Now hearing civil matter 15-12920, *Johansen v. Liberty Mutual Group, Inc.* Will counsel please identify themselves for the record.

MR. BRODERICK: Good morning, your Honor. Edward Broderick for the plaintiff.

MR. REIF: Good morning, your Honor. Michael Reif for defendant Liberty Mutual. Along with me --

MS. SINGH: Manleen Singh.

MR. DOCKTERMAN: Good morning, your Honor. Michael Dockterman on behalf of Digitas.

MR. BATSON: Good morning, your Honor. Michael --

THE COURT: Hold on a second.

(Pause.)

THE COURT: Okay. Thank you.

MR. BATSON: Good morning, your Honor. Michael Batson on behalf of Precise Leads.

MR. KOLTUN: Good morning, your Honor. Joseph Koltun on behalf of Dave Stafford.

THE COURT: Oh, Mr. Koltun. Thank you for joining us. And I understand Mr. Stafford's on the phone?

1 MR. KOLTUN: I believe that he is, your Honor.

2 MR. STAFFORD: Good morning.

3 THE COURT: Okay. This is a lot of paper for a case
4 that is not going to affect world hunger; nonetheless, we'll
5 march through it. Mr. Stafford, let's take care of you first
6 so you could be on your way because I know you're on vacation.
7 I'm sure that you and Mr. Koltun understand that you
8 just -- you are in this case and you have to participate. You
9 have to listen to court orders, you have to show up, you have
10 to obey deadlines.

11 You understand that, Mr. Stafford?

12 MR. STAFFORD: Yes, your Honor.

13 THE COURT: All right. Now, Mr. Koltun, you and
14 Mr. Stafford are going to supplement your discovery responses
15 for the plaintiff?

16 MR. KOLTUN: Yes, your Honor, we are. We have
17 actually already provided supplemental interrogatory responses
18 yesterday to the interrogatories that were outlined in the
19 motion to compel. Those were just provided yesterday. We are
20 also going to supplement the document production as soon as I
21 get a handle on what has actually been produced and responded
22 to by prior counsel.

23 I received about 175 pages of Bates-stamped documents
24 on Tuesday evening, but I'm not sure that those have even been
25 officially produced and I'm not even sure if the first request

1 for production of documents was responded to. So I'm trying to
2 get my hands around that and we will respond to those requests.

3 THE COURT: All right.

4 And, Mr. Broderick, is what they are doing acceptable
5 to you?

6 MR. BRODERICK: Yes, provided we get call records.
7 That's our biggest focus, you know, and we think that they have
8 access to the Invoca system, the platform on which the calls
9 are made. So while they say, "We didn't make the calls,
10 somebody else we were working with did," we want to get
11 whatever they have access to, whether they made the calls
12 themselves or somebody did it, that they were contracting with,
13 as well as I think a full interrogatory response of what is
14 this complicated interrelationship between multiple parties and
15 what their roles were. But that said, we'll wait and see what
16 documents are produced.

17 THE COURT: Okay.

18 All right. Mr. Stafford, are we clear that you either
19 need to be represented or show up yourself or otherwise respond
20 appropriately to court orders?

21 MR. STAFFORD: Yes, your Honor.

22 THE COURT: All right. I'm going to take you at your
23 word for that. You've been very frustrating to date. But
24 since you have an attorney here and I have your representation
25 on that, if you want to hang up and go enjoy your vacation, you

1 may do that, or you can stay.

2 MR. STAFFORD: No, your Honor. That's fine. I have
3 counsel there.

4 Just to be clear, prior counsel told me that -- after
5 they withdrew, that I was not allowed to respond to a lot of
6 that. I didn't even understand which ones I was supposed to.
7 So now that I have counsel, I'll make sure that I do respond.

8 THE COURT: Okay. You know, I have a limited range of
9 solutions to these problems. And I have another case where I
10 actually just had to order that somebody be arrested for
11 failure to comply with court orders only because once I
12 threaten you and fine you, I have nothing else but prison. So
13 either -- if you're going to represent yourself, which I'm glad
14 you no longer are, you really have to pay attention to what the
15 filings say or you need to hire counsel to make sure you don't
16 get too far into the soup on this stuff, all right?

17 But no harm, no foul. You have a lawyer here now and
18 we'll take it as it comes going forward.

19 MR. BRODERICK: Your Honor, may I make one point?
20 Mr. Koltun is not yet appearing for Spanish Quotes, which might
21 continue to be an issue because they're a corporation. He's
22 here today only on behalf of Mr. Stafford. That's an
23 important --

24 MR. KOLTUN: That is correct, your Honor. I am
25 appearing today on behalf of Mr. Stafford in response to the

1 order to show cause. But I have worked with Mr. Stafford to
2 provide the interrogatory responses on behalf of Spanish
3 Quotes, and I will represent to the Court that I will continue
4 to work with Mr. Stafford to provide responses to the request
5 for production of documents.

6 THE COURT: Is Spanish Quotes still in business?

7 MR. KOLTUN: Hanging on by a thread, your Honor, and I
8 do want to represent to the Court that I do represent Spanish
9 Quotes in a state court proceeding. It's a collection matter.
10 But they're barely hanging on, your Honor.

11 THE COURT: Mr. Stafford, Spanish Quotes, it's a
12 company that -- they need a lawyer. A company can't show up in
13 court without being represented by a lawyer. A person can
14 represent themselves but a corporation can't.

15 MR. STAFFORD: Yes, your Honor. That's -- I
16 understood that before. And we just simply don't have the
17 funds to hire an attorney for this type of litigation. I mean,
18 these are huge companies that -- we don't have those kinds of
19 funds.

20 THE COURT: Well, Mr. Broderick?

21 MR. STAFFORD: And we've provided financial
22 information to plaintiffs, by the way, so they understand that
23 we didn't have the funds for this.

24 MR. BRODERICK: We understand, I think -- they hired
25 rather expensive counsel in the first instance.

1 THE COURT: All counsel's expensive.

2 MR. BRODERICK: All counsel is, but this was maybe
3 more than some. But what we really want is the data, and we
4 don't think that will be tremendously difficult to produce.
5 And given that Mr. Koltun is representing him, and individually
6 if he could just be, you know, formally retained even on that
7 limited basis, it would allow us to possibly even let them go.
8 That was part of the discussion, but we said, "Hey, look. We
9 understand you're out of money but we need this data," whether
10 they're in the case or even if they were a third-party subpoena
11 defendant. We have no interest in closing anybody down.

12 THE COURT: All right. Mr. Koltun, can you work with
13 Mr. Stafford on this and see if, perhaps, you can get him the
14 discovery and then talk to Mr. Broderick about if there's truly
15 no money there, letting Spanish Quotes out?

16 MR. KOLTUN: Absolutely, your Honor.

17 THE COURT: Okay? All right, Mr. Stafford. I've done
18 what I can for you this morning.

19 MR. STAFFORD: All right. Thank you, your Honor.

20 THE COURT: You can hang up or you can stay. It's up
21 to you.

22 MR. STAFFORD: I will leave. Thank you.

23 THE COURT: I don't blame you.

24 (Mr. Stafford departs the proceedings.)

25 THE COURT: All right. Digitas's motion to dismiss:

1 Interesting motion. I'm interested in it. I don't think we
2 should hear it today. I don't think it's fair to put anyone on
3 the spot on a motion that I didn't notice for hearing, but I
4 would like to set another date for that hearing.

5 Jen, can you do that or do we have to wait for Karen?

6 MR. DOCKTERMAN: We're happy to appear at the Court's
7 pleasure.

8 THE COURT: I usually have my laptop here but I didn't
9 bring it out, and I can't get to my own schedule either.

10 MR. DOCKTERMAN: I know that we have a hearing already
11 scheduled on the 8th of June. I don't know if the Court would
12 like to set that also as a date for this motion.

13 THE COURT: What's the hearing set for on the 8th of
14 June?

15 MR. DOCKTERMAN: I think that there's a status
16 conference.

17 THE COURT: All right. So why don't we set that for
18 the 8th of June.

19 LAW CLERK: We have it for one o'clock.

20 (Discussion off the record.)

21 MR. DOCKTERMAN: If that doesn't work, obviously we'll
22 appear at the Court's pleasure.

23 THE COURT: No. No, it's not -- I'm starting the
24 trial on the 6th and it's a lot of out-of-town lawyers and I
25 told them I'd try it from ten to four, so I can't do it at one

1 anyway, so...

2 (Discussion off the record.)

3 THE COURT: Any estimates on how long an argument on
4 that will take?

5 MR. DOCKTERMAN: Your Honor, we provided a very full
6 description of things in our papers and I'm happy --

7 THE COURT: Do you want argument on it or do you want
8 me to decide it on the papers?

9 MR. DOCKTERMAN: I'm happy to have it decided on the
10 papers, your Honor. But obviously, I'm not the only interested
11 party here.

12 THE COURT: No. Is there anyone that feels that there
13 needs to be argument to supplement the papers?

14 MR. BRODERICK: Not necessarily, your Honor. I think
15 the papers are pretty complete. Obviously, if you'd like --

16 THE COURT: I've read through the papers too. I'm
17 happy to decide it on the papers. I haven't made a decision on
18 it yet. I've actually read all of your briefing papers, but I
19 had my law clerk put together a packet of the cases which I was
20 going to take with me this weekend. So I've read the briefing
21 but not the underlying cases so --

22 MR. DOCKTERMAN: Perhaps if the Court has questions,
23 we can appear on the 8th. It wouldn't be a full-blown argument
24 but if you have questions, we answer them and then perhaps the
25 Court can decide.

1 THE COURT: Okay. So if we're going to stick to the
2 8th, I can't do it at one -- when I try full days, I recess for
3 lunch at twelve and bring them back at quarter of one. So you
4 could come in for a status or we could cancel -- is anything on
5 for the status besides -- there -- once we have today, there
6 would be nothing besides that motion on for the 8th?

7 MR. DOCKTERMAN: I think that's correct, your Honor.

8 THE COURT: All right. Well, why don't we -- can we
9 move it to noon on the 8th and I'll cancel it if I don't have
10 any questions after the weekend?

11 MR. DOCKTERMAN: Your Honor, whatever is the Court's
12 pleasure. If you want to do it earlier in the morning or at
13 the end of the day, whatever works for you.

14 THE COURT: I can't -- ten to four and I -- I give
15 them nine-thirty for outstanding morning motions. And so let's
16 move it to noon on the 8th, and if I don't have any questions
17 after I read the cases this weekend, we'll cancel it, okay?
18 All right. So that's the motion to dismiss.

19 MR. DOCKTERMAN: Thank you, your Honor.

20 THE COURT: Plaintiffs' motion for extension of time
21 to complete discovery. What is left to do that you want to do
22 in these extra 60 days?

23 MR. BRODERICK: Well, your Honor --

24 THE COURT: Can it be done in 30 days?

25 MR. BRODERICK: That's dependent on getting the

1 records that we're seeking, and it's also dependent on
2 third-party subpoena respondents who are notoriously reluctant
3 to give over call records in these cases. So I think it would
4 be a challenge but we'll take what we can get, if we can do it,
5 but we don't think -- we think that the schedule that we've
6 proposed doesn't actually jam the defendants as much as they've
7 said because they've got six weeks to depose our expert before
8 their opposition to class cert is due, and we feel like we've
9 jammed in not getting the class-wide discovery that we're
10 seeking after the Court directed everybody, "Look, we want full
11 discovery here and not, you know, quasi bifurcated class
12 discovery," so that's why we asked for 60 days. And we also
13 have to schedule depositions with a lot of parties, which can
14 be a challenge.

15 THE COURT: All right. I mean, I'm willing to give
16 him the 60 days. I understand the defendants' concern about
17 having the class certification opposition due in such close
18 proximity to the close of expert discovery. So if you all want
19 some extra time for that, I'm happy to give you that as well.

20 MR. DOCKTERMAN: Well, your Honor, obviously our
21 position is it's all unnecessary because we've satisfied the
22 plaintiff, and so that all of this is sort of protective
23 scheduling as opposed to anything else. And to the extent that
24 plaintiff has been satisfied, to me the remaining issue really
25 would be the Court's entry of an order disposing of the case,

1 and that would leave a dispute between Liberty Mutual and
2 Digitas.

3 On that score, discovery is something which we could
4 work through, but I do have to raise the issue for you that we
5 would -- our discovery responses to the plaintiff aren't due
6 for another several weeks anyway just because of when we were
7 served, and we would hope by the 8th you've reached a decision
8 and make that all moot.

9 THE COURT: By the 8th?

10 MR. DOCKTERMAN: Well, if that's the date that you
11 were theoretically going to hear the motion that we had set.
12 But whenever the Court wants. Obviously, our client would
13 prefer not to engage in discovery in a case where we have, on
14 behalf of all of the defendants, satisfied everything that the
15 plaintiff wants. Full damages, anything that the plaintiff
16 could claim, we took the number right out of the plaintiffs'
17 interrogatories --

18 THE COURT: I understand. I understand the basis. So
19 even if I decided by the 8th, which I may have, it's going to
20 require a written decision, and there's a zero percent chance
21 that a written decision is going to be done between now and
22 Tuesday. So why don't we -- I'll give him the 60 days and, you
23 know, don't spend too much money between now and then. We'll
24 try and get a decision -- I don't know what the decision is
25 going to be, but we'll try and get it done as quickly as we

1 can. We're just starting an eight-week trial on Monday and
2 we're sitting ten to four so --

3 MR. DOCKTERMAN: Well, I have tried to craft a way for
4 you to take this off your calendar altogether, and in talking
5 to Liberty, I believe if the plaintiffs' claims were over,
6 Liberty and Digitas would find a way not to have to trouble you
7 with their dispute.

8 THE COURT: I was confident of that.

9 MR. DOCKTERMAN: I'm sure that the Court has read that
10 correctly. So there's not much more I can do in order to clear
11 it for your eight-week trial.

12 THE COURT: I honestly don't know what the resolution
13 to the motion is. I think it's a very interesting issue. I
14 haven't encountered it before. The briefing is all very good
15 and I just -- I'm interested in it but I really haven't made a
16 decision.

17 MR. REIF: Your Honor, I'd just suggest that you
18 consider extending only 30 days. I think that the discovery
19 that plaintiff is seeking has been largely submitted already.

20 THE COURT: I agree. I think that 60 days is a long
21 time to extend this and I feel a little back-doored by it
22 because I already told you that you couldn't have the time when
23 I set the initial scheduling conference and now you're coming
24 back to the same well for it, so it's like you're asking mom
25 when dad said no. But, on the other hand, there's a pending

1 motion to dismiss and it doesn't make sense for anybody to be
2 spending too much money when that isn't resolved one way or the
3 other. So Liberty did join two parties in the middle of the
4 whole thing. They did know about them but they weren't
5 officially joined to the thing. So I don't think the 60 days
6 is going to make or break anybody in any significant way so --

7 MR. REIF: Yes, your Honor. Thank you.

8 MR. BATSON: Your Honor, Michael Batson. I represent
9 Precise Leads. I just wanted to throw in my hat and say I
10 agree with Digitas's counsel and Liberty's counsel.

11 THE COURT: I saw that, yeah. I see there's been
12 plenty of agreement on the defendants' side, which is nice to
13 see.

14 All right. So I'll give you the 60 days on that. Is
15 there going to be expert discovery in this case? What's going
16 to be the expert discovery?

17 MR. BRODERICK: I would think so, your Honor. I would
18 think we would have depositions of the experts.

19 THE COURT: What are the experts about?

20 MR. BRODERICK: The experts are about identifying
21 people who were on the do-not-call list, and you have to be
22 called more than once in a 12-month period. So you have to
23 analyze the call records. So they're sort of data experts.
24 And they, you know, generate a pretty detailed report saying,
25 This is the number of violations, these are the unique numbers

1 called, you know, so there's a fair bit to it. And they have
2 to do the internal do-not-call analysis as well, and that means
3 we have to have the complete internal do-not-call list from
4 Liberty to identify the people whose numbers were called.

5 So that's the kind of work an expert does in this
6 case, and there's typically a fair amount of fighting over it.

7 THE COURT: Okay. I'll leave the expert discovery
8 deadlines in there. If you all want more time, I can either
9 give you it now or if you want to make a motion when it becomes
10 apparent that you need it, if you need it.

11 MR. DOCKTERMAN: I'd rather do an "if," your Honor, if
12 that's all right with you.

13 THE COURT: That's fine. I know you're -- you want to
14 be optimistic over that, right?

15 MR. DOCKTERMAN: Confident, your Honor.

16 THE COURT: Yeah. All right.

17 All right. That leaves plaintiffs -- that leaves
18 plaintiffs' motion to compel discovery responses from Liberty.
19 I think they have the better part of the argument. I wholly
20 understand your frustration on this. I don't know what the
21 answer is, but defending it on the merits doesn't obviate your
22 discovery obligations. I don't -- I don't -- so I know that
23 you've agreed to produce through 2014, you want through 2011.
24 What's the -- how are you coming up with 2014?

25 MR. REIF: Your Honor, we were restricting the amount

1 of time to the period in which plaintiff is actually alleging
2 that he received calls so we thought that we were making a
3 good-faith effort to giving him call records but not expose
4 privacy concerns related to records that went that far and,
5 frankly, trying to limit calls that we view as not violative of
6 the TCPA. And, again, I understand some of this goes to the
7 merits, but the merits say a lot about relevancy of these
8 records, your Honor.

9 The records that Liberty has are records of inbound
10 calls made by people actually calling Liberty themselves and
11 warm transfers, so people that have requested an auto insurance
12 quote, have been called to confirm that request, they've
13 confirmed their consent to be transferred and --

14 THE COURT: I saw what you said about -- but he says
15 that that's not right. He says that he really wasn't a warm
16 call or an incoming call.

17 MR. REIF: That's right. And, your Honor, it's our
18 belief that this was an anomaly. And we also know that -- and
19 we just deposed plaintiff yesterday -- that on every one of the
20 calls that he received, he confirmed to the caller his interest
21 in receiving an auto insurance quote and transferred to an
22 outside agent. And so this is not a typical kind of case.

23 And I think that that's really, the inquiry that we
24 need to engage in for class certification, really has nothing
25 to do with the rest of the class, or people that the records

1 that Liberty might have that they would be producing. The real
2 question is, this person who made it a point to keep saying yes
3 even though he wasn't interested in insurance, who never asked
4 that initial caller to be put on their do-not-call list,
5 whether he is in any way representative of the class. Nothing
6 about the records that Liberty has is going to say anything
7 about whether, you know, a broader class should be certified.

8 THE COURT: Well, it could be -- you asked for -- you
9 didn't ask for any bifurcated discovery so we're in all of it.
10 Now, why do you need to 2011 and not to 2014?

11 MR. BRODERICK: Because that's the class period, your
12 Honor.

13 THE COURT: But why is it the class period?

14 MR. BRODERICK: It's a four-year statute of
15 limitations, so that's how far back it goes. And we'd be
16 facing a problem where they'd say, Well, you can't ascertain
17 the class because you don't have any records to identify the
18 people over the four-year period. I'd add that limiting the
19 information to Mr. Johansen's calls, we'd lose complaints
20 lodged by other people who'd say, Hey, didn't have my consent
21 to call me.

22 And another point I'll make about this supposed
23 consent, I said, he's given sworn testimony that he did not go
24 to any of these websites, as did his wife, but even if he had
25 visited that website, it's legally invalid consent. You have

1 to have --

2 THE COURT: Maybe. I saw your brief. Maybe it is,
3 maybe it isn't. I mean --

4 MR. BRODERICK: We'd say -- I mean, in any event, it's
5 an affirmative defense so they're sort of giving, you know, a
6 sua sponte grant of summary judgment on an affirmative defense
7 to themselves as a reason not to give discovery and we've --

8 THE COURT: That's what good lawyers do.

9 MR. BRODERICK: I suppose. But it's not a -- we don't
10 think it's a particularly strong defense given what we've seen
11 of the supposed websites, and it's an issue we've faced in
12 other cases.

13 And as to saying "yes" on the calls, that's just an
14 investigation to try to find out who's calling him, and that's
15 after the violation has occurred. He's on the do-not-call
16 list.

17 THE COURT: I'm going to give you discovery. I just
18 want to make sure that it stays proportional to the case so if
19 there's some meaningful way to split it up, I would do that.
20 How -- what's the volume of data that we're talking about?

21 MR. REIF: I think the call records that Liberty has,
22 they're somewhere in the neighborhood of 300,000.

23 THE COURT: Can you segregate -- can you segregate
24 incoming from the outgoing?

25 MR. REIF: No. And again, part of that, your Honor,

1 is Liberty is not placing these calls. These are calls that
2 have made it to Liberty because people have expressed an
3 interest, either inbound or through the warm transfer or a
4 confirmation of their interest. So that's part of the issue
5 for us.

6 The other issue I'd raise, your Honor, is that Liberty
7 doesn't have calls going back to 2011 as it is. The contracts
8 it has with the vendors at issue go back to 2012 and 2013, so
9 that would obviously impact how much we would have to put out
10 there as well.

11 MR. BRODERICK: Well, obviously they can only produce
12 what they have but, you know, from past experience we think
13 that the -- particularly the warm transfers can be identified
14 as -- you know, from the system, because people get paid for
15 these warm transfers so they have to know who's sending it in.
16 It's a pretty complicated program that tracks all the data.
17 And that's how they get \$35 for a call that lasts more than
18 three minutes but if it's a transfer that occurred from a call
19 less than three minutes, they don't get anything.

20 THE COURT: Why do you want the warm transfers?

21 MR. BRODERICK: Because those are people that we know
22 received a call -- received an outbound call. There's a claim
23 that, you know, this is people calling us, whereas a warm
24 transfer, somebody has placed a call to them, gets them on the
25 phone and transfers them over. At least that's the way it's --

1 THE COURT: Can you segregate the warm transfers from
2 the other calls?

3 MR. REIF: No, your Honor. That's what we're talking
4 about. And really, the point is that the inbound calls
5 shouldn't be in there at all. Their interest is in the warm
6 transfer calls and that's -- again, our understanding, based on
7 having spoken to our client about this pretty extensively, is
8 there's not a way to track which ones are inbound and which
9 ones are warm transfers.

10 THE COURT: So what are you going to do with this data
11 once you get it?

12 MR. BRODERICK: Our expert will analyze it for -- I
13 mean, first of all, I don't want to concede that I'm only
14 interested in warm transfers or concede that these are actually
15 inbound calls because the defense as to Mr. Johansen is "This
16 is an inbound call. We don't make outbound calls." Spanish
17 Quotes said, "We don't make outbound calls," and yet he's
18 clearly receiving calls so we don't concede that.

19 THE COURT: He's right that there's a privacy interest
20 to the extent that people are making inbound calls to Liberty
21 and if they're -- you don't have any need for the inbound
22 calls. So what are you going to do -- you have this whole
23 -- you're going to get a list of 300,000 calls. What are you
24 going to do with them?

25 MR. BRODERICK: We're going to analyze them to see

1 which of those people were on the do-not-call list but --

2 THE COURT: And then what are you going to do?

3 MR. BRODERICK: And then our expert will generate a
4 report saying how many violations of the TCPA have occurred,
5 and then they have an affirmative defense as to consent.

6 THE COURT: How are you going to -- how are you going
7 to -- are you -- are you going to contact these people to find
8 out whether they made an inbound call?

9 MR. BRODERICK: No. No, that's not necessary. It's
10 something you get from the data. I mean, if we --

11 THE COURT: How are you going to figure out the
12 inbound calls?

13 MR. BRODERICK: It's hard to say. Not seeing the data
14 and not having responses as to whether these are, in fact,
15 inbound calls or not, you know, that's something we face where
16 people say, "Well, it's not an inbound call" -- in robo call
17 cases, somebody presses one, and we've had telemarketing people
18 say, "Well, that's an incoming call. We made a robo call but
19 then they pressed one and then it came into us." And we
20 don't -- at this point we don't know so I can't say, "Oh, let's
21 limit it to this piece of the data."

22 MR. REIF: Your Honor, if I may, they have seen the
23 data. We've produced three and a half months of data. They've
24 had ample opportunity to put that in front of their experts and
25 have them take a shot at it, and our producing more at this

1 point doesn't give them any more than additional numbers for
2 them to potentially call themselves. I mean, that's why we
3 tried to find a middle ground and produce data to them. We
4 didn't want to be obstructionists, we tried to play along, but
5 we wanted to be sensitive to both the factual reality of this
6 case and also the privacy interest of the people there.

7 I mean, I'll just say, you know, for the people that
8 were calling in -- and really, the whole focus of both of these
9 programs was not for Liberty to be receiving calls that were
10 started as a cold call. Liberty has no interest in a
11 scattershot approach for people who may or may not be
12 interested in insurance; they're far more interested in people
13 that have already expressed an interest in receiving a quote
14 than having that go to Liberty among a series of other
15 insurers.

16 THE COURT: All right. I'm -- you need to produce
17 what he's looking for, but I don't want you to call these
18 people.

19 MR. BRODERICK: No, your Honor. That's not a problem.

20 THE COURT: All right?

21 MR. REIF: For which period, your Honor?

22 THE COURT: The class period.

23 MR. REIF: Okay.

24 THE COURT: I mean -- look, I don't think that I
25 have -- I mean, I think they're entitled to the discovery for

1 the class period. I completely understand your position, and
2 if you're telling me it was, you know, 300 million calls, I
3 could do something like proportionality, but 300,000 calls,
4 it's -- and the data that he's looking for -- I'm concerned
5 about the privacy of people that are calling you, but he's not
6 going to reach back out to call them, so I think it needs to be
7 produced.

8 MR. REIF: Okay. Thank you, your Honor.

9 MR. BATSON: Your Honor, I don't have an immediate
10 interest in the motion that's at issue because I don't
11 represent Liberty Mutual; however, we do have pending discovery
12 requests for Precise Leads that we're in the process of
13 responding to, and we were planning on hopefully responding
14 next week. This issue, I think, is going to come up again with
15 Precise Leads. Now, Precise Leads only just got brought into
16 the case, and this is the first time I'm actually hearing that
17 discovery is on a class-wide basis and not a pre-certification
18 discovery, which is what makes more sense here in my mind. We
19 have --

20 THE COURT: Liberty -- at the initial scheduling
21 conference there was no request for bifurcated discovery.

22 MR. BATSON: Understood, your Honor. I'm just saying
23 this is the first I've heard it and that's not how we've been
24 putting together our discovery request. Precise Leads is a
25 lead aggregator, never made a phone call to a single person,

1 dealt with collecting the information that was input on the
2 web.

3 I think the discussion that plaintiffs' counsel just
4 had illustrates why it might be premature to get into this type
5 of discovery, and the reason for that is in Mr. Johansen's case
6 we have ample evidence that he did, in fact, request to receive
7 these calls not during the calls themselves, before the calls
8 were made, and consent to them in writing and verbally, and yet
9 Mr. Johansen himself disputes it. And you can imagine --

10 THE COURT: Hold on a second. So if he's not making
11 any calls, he's just aggregating, why do you need his data?

12 MR. BRODERICK: Well, the question is: What data does
13 he have about the calls that were made? I don't know what he
14 has, you know --

15 THE COURT: What do you have? What data do you have
16 about the calls that were made?

17 MR. BATSON: The types of data that we have, your
18 Honor, is that when somebody fills out a web form, the
19 information is input into a system. That system
20 then -- there's a process by which the lead is purchased. That
21 lead then gets transferred to a call center who then does what
22 it does with respect to the call.

23 Precise Leads itself does not make the phone call.
24 They don't make outbound calls. They've never made an outbound
25 call on behalf of Liberty Mutual. All they do is collect the

1 consent that comes in from -- and they only pass it on if that
2 consent has been given.

3 But without deciding whether that's right or wrong,
4 your Honor, the issue is, is that in every single instance
5 where a lead has generated one of these warm transfers, at
6 least from Precise Leads' stance, if plaintiff identifies that
7 someone is on the do-not-call list, the affirmative defense is
8 going to be made by, presumably, Liberty Mutual that consent
9 was provided, then we have to get into discovery of taking
10 depositions and finding out because, presumably, if they're
11 being alleged to be a member of the class, they're going to be
12 saying, "Well, no, I didn't," just like Mr. Johansen does.

13 So you end up having to take these depositions,
14 getting into their computer records. I mean, there's all sorts
15 of discovery that may be associated with that. And before you
16 even know that there is a class, you're now doing -- I mean, it
17 may be ten people, it may be 100 people, it may be 1,000
18 people, but however many people that is, you end up having to
19 do the individualized discovery with respect to each of those
20 people.

21 And that's why in this particular case and under these
22 circumstances had I been in the case back when you had the
23 status conference in December, I would have suggested to the
24 Court that this is a prime example of a case where you have to
25 do some preliminary class certification discovery before you

1 really get into the merits, because with Precise Leads -- and I
2 just had this conversation yesterday with my client. Precise
3 Leads, if they want to actually provide all the data that they
4 have with respect to their leads, and so much of it is
5 irrelevant because it doesn't relate at all to the allegations
6 here, but if you want to data mine into it and provide all the
7 data, most of it -- because you're talking about computer data,
8 most of it has been archived because the expense of keeping it
9 on an active system is immense. And so that data is all
10 archived, and that then becomes hugely burdensome to actually
11 take the time to go find it and the expense that you have to do
12 to data mine into finding that data.

13 And right now I have asked my clients to find out what
14 is the cost and what is the burden to do it. He told me
15 yesterday, "This has now become my full-time job just
16 responding to these discovery requests," and he has a business
17 to run.

18 Nevertheless, when we respond, our intent, unless your
19 Honor tells me today not to -- our intent was to respond to
20 whatever is relevant to Mr. Johansen's claim and to what is
21 relevant in our minds to the pre-certification stage. As I
22 said, we didn't make calls, so there's a lot of this TCPA
23 discovery that might not be relevant to a party like Precise
24 Leads, particularly --

25 THE COURT: Okay. I'd like to limit -- he makes some

1 good points. I would like to limit his discovery for the time
2 being. So how are we going to do that?

3 MR. BRODERICK: Well, your Honor, the problem is we're
4 on this pretty fast track, and with limited time left, and if
5 the defendants were stipulating -- consent is not a bar to
6 class certification, and we're going to have a -- you know,
7 we're going to decide it on a class-wide basis later, that
8 might be fine, but I doubt that's going to the happen.

9 THE COURT: He's --

10 MR. BRODERICK: I mean, it's not an insignificant
11 source of information. They're the consent provider.

12 THE COURT: It's a central defense.

13 MR. BRODERICK: Well, right, but it's a central
14 defense to the case that we had consent, and we think we need
15 to get that information to challenge that central defense. And
16 not just with respect to Mr. Johansen, but getting the
17 information might undermine the validity of this purported
18 consent that -- you know, Mr. Johansen's IP address did not
19 match the supposed form so --

20 THE COURT: No, I understand. I read --

21 MR. BRODERICK: Yeah, but that's a big issue. So if
22 this is all -- you know, we have seen this in other cases. I
23 can't speak to Precise Leads, but where a telemarketer is
24 challenged, Hey, you made a call to this person, they've
25 complained to us by the principal, the principal says, What's

1 the story? They gin up a consent form with an IP address that
2 doesn't match.

3 THE COURT: Are you eventually going to have -- are
4 you going to know the name of everybody that's in this class?

5 MR. BRODERICK: Eventually, yes, whether the data is
6 available with -- sometimes you get data -- you know, you get a
7 lead list with a full address, as they say, We used this data,
8 you know, this lead list to call people, that's great.

9 THE COURT: Doesn't it make sense once you have a
10 class to run it against his data?

11 MR. BRODERICK: As I said, only if consent is not a
12 barrier to the case being certified and only if they don't make
13 a challenge that the class isn't ascertainable, and then I
14 don't see what the bar is to class certification.

15 THE COURT: I mean, your client may not be
16 representative or typical.

17 MR. BATSON: And, your Honor, I would say consent
18 actually is a barrier to certification but not for the reason
19 that he's hinting at; it's because it would devolve into a
20 bunch of mini trials to try and figure out whether the person
21 did or did not give consent. That is going to be, probably, on
22 all of these because, again, what Liberty Mutual did was hire
23 people to -- at least in Precise Leads' case, to do these warm
24 transfers which, by their very nature, are transfers where
25 there is consent.

1 Understanding he might dispute that, but the idea that
2 consent is an affirmative defense, you're going to have to
3 figure that out in every case. I know it's premature to be
4 talking about this, but as we think about it, before we even
5 know that there is a class, they're asking us to essentially
6 data mine a ton of information and that's just -- it's not
7 something that at this stage you need, and certainly with
8 respect to whether or not they can ascertain who --

9 You know, whether or not they have the Rule 23
10 elements that they need, they don't need our data to do that.
11 We're happy to provide it with respect to Mr. Johansen. We're
12 not trying to suggest that we're not. And we're trying to put
13 that together right now. Again, even with Mr. Johansen it's
14 not an easy process, and that's one person. Nevertheless, he
15 doesn't need that information to make his class certification
16 argument.

17 MR. BRODERICK: Yes, we do.

18 THE COURT: Well, he's going to make a motion for
19 class certification, they're going to say -- you're going to
20 say it's not a good class because some of these people
21 consented.

22 MR. REIF: Your Honor, we're going to say it's not a
23 good class because by the nature of the records that we have,
24 the records that they're pulling their class from, we believe
25 everyone consented.

1 MR. BRODERICK: We don't -- sorry.

2 MR. REIF: No, it's not a matter of -- you know, he
3 talked about ginning up a consent sheet? The fact is that
4 we've got call recordings showing that when people were
5 asking -- talking with Mr. Johansen, there was -- they had
6 information about him that was true. Now, some of it was
7 outdated, that's true, some of it was an old address, but this
8 is not something that they had somehow invented. And so I
9 don't know where that lead sheet came from. This is the first
10 time ever hearing in their motion -- their reply that the IP
11 addresses didn't match. We asked for that information and we
12 hadn't gotten it before. So I'm not quite sure what that's
13 about, but that's why this goes beyond just, you know, sort of
14 the academic running of these records against some kind of
15 list. You know, we have major concerns about, you know,
16 propriety of looking into these calls at all.

17 And just briefly, your Honor, I said earlier it was
18 300,000 calls. I may be wrong about that number, so I would
19 ask if the Court does, in fact, ask for broader discovery, that
20 you give us a chance to get back in contact with the Court if
21 the number is much, much bigger, in which case I would be
22 asking for something more proportional.

23 THE COURT: No, you could do that but, you know,
24 they're entitled to class discovery unless it's -- there's some
25 reason that they're not. So you can go ahead and make that

1 argument, but for the time being I'm going to order it.

2 You're going to make a motion for class certification.
3 You're going to oppose class certification on the consent issue
4 or you're going to contest it on the merits on the consent
5 issue?

6 MR. REIF: It will be both, your Honor. Again, we do
7 believe that there was consent all the time. We think that in
8 the case of Mr. Johansen that there was consent, but it comes
9 down to -- I mean, one of our major arguments in class cert
10 opposition would be exactly what Mr. Batson said, is that this
11 is a matter of mini trials in part because a person could be on
12 the do-not-call list and could have ended up in Liberty's call
13 records because they made this call coming in.

14 And so to go through and figure out -- even if they do
15 their scrubbing and they end up with a list of people that are
16 on the national do-not-call list and they ended up in Liberty's
17 call database, there's no way of saying that those people
18 represent a violation of the TCPA without going through and
19 figuring out in each case whether they gave consent or whether
20 they had made the call themselves.

21 THE COURT: All right. Well, help me out here. I
22 want to limit his discovery on Precise Leads. It does seem
23 it's going to be a huge cost and huge amount of work to do it
24 without knowing who he's looking for.

25 MR. BRODERICK: Well, I mean, they're asking to not

1 have to produce the evidence of consent, in essence; that is,
2 that supposedly --

3 THE COURT: What are you asking for?

4 MR. BRODERICK: We've said provide all evidence that
5 any of these people that were called consented to that.

6 THE COURT: So leads that they have related to
7 Liberty?

8 MR. BRODERICK: Yes.

9 THE COURT: Limited to Liberty?

10 MR. BRODERICK: Well, the marketing is -- can be on
11 behalf of multiple insurance companies, but we say if you're in
12 that group, you're jointly and severally liable for those
13 calls. Now, some may be limited to Liberty. Sometimes there
14 are dedicated campaigns. But we're sort of arguing in a black
15 box about what they should have to produce. We think they
16 should have to respond to our discovery requests and not modify
17 them in advance, and we can actually have an idea of what they
18 did produce and what they didn't produce.

19 But you can't say there's going to be a thousand mini
20 trials because of our affirmative defense but we're not going
21 to show you what the consent evidence is. Just take our word
22 for it that there's consent evidence out there, particularly
23 where Johansen --

24 THE COURT: I want to get you consent evidence, but I
25 don't want to get you the class evidence on a much broader

1 group than the class is going to ultimately be.

2 MR. BATSON: And, your Honor, we're going to provide
3 him -- in fact, some of it might already have been produced by
4 Liberty Mutual, but we're going to provide him the evidence
5 that we have with respect to Mr. Johansen. We're not asking to
6 limit that at all. The problem is when you get into -- if you
7 just want consent evidence for every other person that was
8 involved in even just Liberty Mutual's campaign, it doesn't
9 separate that way. If you do one, you do everything.

10 THE COURT: What I want to find a way to do -- and
11 again, this is not my area of expertise so you can tell me if
12 I'm totally barking up the wrong tree, but I would like to find
13 a way where he produces to you his information on people that
14 are on the do-not-call list and not his information on the
15 entire universe.

16 MR. BATSON: That is a larger expense than just
17 pulling out the data, your Honor. If that is -- if the
18 original issue is not proportional, then that just blows up the
19 expense. I mean, get the data and then have an expert go in
20 and --

21 THE COURT: No. No, I'm trying the other way:
22 Identify who's on the do-not-call list and then --

23 MR. BATSON: Oh, from whatever's produced by --

24 THE COURT: Yes.

25 MR. BATSON: I would have to check with my client, but

1 that is certainly less of a burden than having to do it on a
2 much larger basis. And I will just say this is part of the
3 problem -- and I agree, it's a little bit premature to be
4 talking about individualized discovery because we haven't
5 served it yet, our responses yet, but this is as classic a
6 fishing expedition as you can possibly get. It's we've got
7 Johansen, we've got problems with Johansen, let's see if we've
8 got somebody else out there when Johansen is gone, and so just
9 give me everything you have about anything you've ever done
10 with respect to anybody and hopefully, even if this class
11 action doesn't work, maybe we'll be able, to use the phrase,
12 gin up another one.

13 And, you know, this suggestion, by the way, that we
14 gin up data, I would say, is preposterous. I mean, there's no
15 evidence of that. The evidence that we have with respect to
16 Mr. Johansen, even if he wants to dispute it, is information
17 that we believe is sound and solid. And that would be --

18 THE COURT: Mr. Broderick is regretting the use of the
19 term "gin up" but I take his point.

20 MR. BRODERICK: Well, I have seen it ginned up in
21 other cases. I don't actually regret it. But I didn't say it
22 about Precise Leads because I don't know. I haven't gotten
23 their response.

24 THE COURT: So this is what I'm envisioning, and you
25 can tell me how I have this not right. But you get a list of

1 people from, say, Liberty, right? Is there call information
2 coming from other sources besides Liberty?

3 MR. BRODERICK: We hope so, from some of these
4 third-party subpoena responses.

5 THE COURT: You get a list of calls, you figure out
6 who on that list is on the do-not-call list, and then he
7 responds to that list.

8 MR. BRODERICK: That's possible. But, you know, part
9 of the problem is that if you're calling people on the basis of
10 this consent, we'd like to be able to test the consent pretty
11 broadly. But it may be that our do-not-call list works but if
12 there is -- if it's riddled with IP addresses that don't match
13 the people who supposedly consented, you know, or in the
14 Johansen's case, both that and the address is wrong and they're
15 shown as having a car they don't own --

16 THE COURT: It doesn't matter. If they're on the
17 do-not-call list, it doesn't matter.

18 MR. BRODERICK: That's true. That's true. And that
19 may be a fine solution, it's just it's a little bit hard to see
20 how that all works in a sequenced way within a 60-day discovery
21 period. And if it's going to take that long to get --

22 THE COURT: You mean an extra 60 days? If he gives
23 you the list of people on the do-not-call list, how long does
24 it take your people to extract that data?

25 MR. BATSON: I don't know, your Honor. Right now

1 there is a request right now to figure out how we get to that
2 data. So, I mean, I will tell you the data that we are going
3 to have is going to say that there was consent. To actually
4 track down the specific data -- let's just say he gives me ten
5 calls, right, that are on the do-not-call list and that they
6 want data for, and that fit into the -- by the way, the two
7 calls within a 12-month period because that's part of it as
8 well. It's not just a call, it's two calls.

9 So if he gives me a list and there are ten people, I'm
10 going to provide him with consent to ten people because that's
11 our business. We don't do this unless there's consent. He may
12 want to challenge the sufficiency of it, but that's the nature
13 of our business. So everybody's going to have consent.

14 I'm then going to have to have my client go data mine
15 to find information because you may be talking about a call
16 from -- if you're talking about a call from 2014, for example,
17 that data is no longer on their main system. If you're talking
18 about a call from a month ago, it may already be archived
19 because of the nature of what they're doing.

20 So it really depends on how many he gives me, and I am
21 working on figuring out the cost to actually get that
22 information out of archives.

23 THE COURT: Okay. Forget about the cost for the
24 moment.

25 MR. BATSON: Time-wise?

1 THE COURT: Time.

2 MR. BATSON: I don't know. It depends on how many
3 there are, but I have to imagine it can be done in less than 30
4 days, maybe even quicker than that. I'm not sure whether it's
5 necessary to extend the deadline just for that.

6 THE COURT: So I'm going to -- I think you all
7 understand my vision and what we're aiming for. Given 60 days
8 that I didn't want to give, so now everybody has a lot more
9 time, we'll get your motion done, so let's try and -- let's try
10 and do it that way, okay? You get the numbers and you give him
11 people that you can identify on the do-not-call list and you
12 try and turn it around quickly.

13 MR. DOCKTERMAN: And, your Honor, I just don't want --
14 I'm loathe to say anything, but I don't want the assumptions to
15 be otherwise. You could see I'm trying to get this off your
16 docket.

17 THE COURT: You're so benevolent.

18 MR. DOCKTERMAN: We have no information that is
19 responsive along these lines. We were hired to do ad
20 campaigns. We hired Spanish Quotes to do all of this stuff.
21 So to the extent that there's any call information, you've
22 already spoken to Mr. Stafford about that. And to the extent
23 that there would have been anything that would have come at our
24 instance, that would have been it.

25 But we're here because we gave them an indemnity and

1 Spanish Quotes gave us an indemnity, and Spanish Quotes isn't
2 living up to their indemnity to us if they have to do anything.
3 I just don't want anybody to expect any documents from us.

4 THE COURT: You expecting documents from him?

5 MR. BRODERICK: Well, what I've seen from their master
6 services agreement, they actually managed the relationships
7 with some of these aggregators. And this is without the
8 benefit of discovery response, but I thought that they were
9 helping them track the efficiency of some of these campaigns,
10 how much they were spending, and that that implies to me that
11 they have access to this Invoca system.

12 Our uninformed understanding is that that's a hub that
13 a lot of these people can tap into to get -- extract data about
14 what calls were made, who made them, who transferred it to whom
15 and who gets paid by whom, you know? So it's a complicated
16 system but it's -- I don't want to concede that, yes, I'm not
17 expecting documents because I'm not sure that that's --

18 THE COURT: Are you telling him you have no responsive
19 documents?

20 MR. DOCKTERMAN: Not to this issue. That's correct,
21 your Honor.

22 THE COURT: He said he has no responsive documents.

23 MR. BRODERICK: No call records or no other types of
24 documents?

25 THE COURT: No call records?

1 MR. DOCKTERMAN: No call documents.

2 MR. BRODERICK: Well, we'll see in the discovery
3 responses to individual requests. As I say --

4 THE COURT: You still have to respond.

5 MR. DOCKTERMAN: Oh, of course. Understood. But I
6 just want it to be clear if somebody comes back and says, Hey,
7 wait a minute, we didn't get anything from Digitas, everybody
8 should know right now as far as call records and all the things
9 that have been discussed right here, that's not going to come
10 from us.

11 THE COURT: You're in a sad and unfortunate position,
12 aren't you?

13 MR. DOCKTERMAN: It's terrible, your Honor. Terrible.
14 But what I have done is I've put some money someplace to make
15 it go away, so that makes me less sad.

16 THE COURT: Mr. Johansen doesn't think you put aside
17 enough money to make it go away.

18 MR. DOCKTERMAN: Well, that's something that the Court
19 will decide. If there's more that we need to put in there,
20 I'll put it in, but I gave him every penny that he identified
21 in his answers to interrogatories.

22 MR. BRODERICK: And not a thin nickel for the class.

23 MR. BATSON: There is none.

24 MR. DOCKTERMAN: Thank you.

25 THE COURT: Is there anything else we could do today?

1 I'm not sure how we're going to get this into an order
2 because --

3 MR. BATSON: We all understand, your Honor.

4 THE COURT: I think everybody should understand.

5 MR. BRODERICK: I don't know that there's anything
6 else we can do. I just want to express my hesitation that
7 putting consent after the assembly of the call records and
8 the -- you know, that sort of -- that all happens at the point
9 of an expert analyzing all the records that we have and
10 that -- so we would have to have some cushion to challenge
11 whatever the consent evidence is because we'd be -- you know,
12 it's not like we're going to have an expert report in two weeks
13 and then we could give it to them and before the end of the
14 discovery period we give consent.

15 THE COURT: I get it. Look, I haven't been doing this
16 that long. I don't know much about this kind of case. The
17 cases that I have seen in this genre moving across my desk end
18 up with -- the costs of the case end up hugely disproportionate
19 to the recovery, and I am very interested in finding ways to
20 make that not happen.

21 I have a case right now that we just got a settlement
22 agreement -- there's a settlement agreement, but the amount to
23 the lawyers is three times the amount to the class. And I
24 am -- and there's new civil rules that give me a little bit
25 more latitude to manage these things and I am trying to find

1 ways to effectively manage it.

2 So if this turns out to be a disaster, I will give you
3 more time and we can regroup, but I want to keep it efficient
4 and I want to keep whatever recovery is made -- I want to keep
5 the legal fees proportionate to the potential recovery. And
6 I -- from my days in private practice, I know what he's talking
7 about, about how expensive discovery can get trying to go back
8 on archived data, so I want you to have the data to which
9 you're entitled, but I would like to figure out a way that you
10 only get the relevant data. And so if that requires me to end
11 up adding another 30 days to this, so be it.

12 MR. BRODERICK: Understood, your Honor. That's
13 my -- because just having done it enough times, it's --

14 THE COURT: Well, I haven't done it that many times --

15 MR. BRODERICK: Right.

16 THE COURT: -- and I may be barking up a bad tree, but
17 I'm interested in exploring different ways of getting you and
18 your client whatever they're entitled to but in an efficient
19 way. So if I have -- if it is a poor idea, we will all find
20 out shortly, and I don't think it will cost too much extra
21 money because it just means he has to go back to his well.

22 MR. BRODERICK: Understood, your Honor. And we're
23 perfectly willing -- if you do want to have oral argument, we'd
24 welcome the chance on the *Campbell-Ewald* issue. It is an
25 interesting issue and we've dealt with it a number of times, so

1 we're happy to appear.

2 THE COURT: I mean, the briefing was very good. I
3 mean, I thought the briefing was very good unencumbered by
4 having read the cases, I guess.

5 MR. DOCKTERMAN: If only they said what we said they
6 said.

7 THE COURT: Yeah. I mean, it's all well said, they're
8 cogent arguments. And it's very good briefing. And so if I
9 have any questions, I'll bring you in about it. You know, it's
10 obviously sort of an evolving -- here's another place where I
11 may or may not get it right, but I'll at least do my best to
12 move you along.

13 MR. BRODERICK: Okay. Thank you.

14 MR. DOCKTERMAN: It is a brand-new issue, your Honor,
15 because, really, the *Gomez* decision, or *Campbell-Ewald*, opened
16 this door only a few months ago. And the majority opinion and
17 the Thomas concurrent both laid out a path which we tried to
18 follow. You will be one of the first to address this issue,
19 which could be exciting and also could be --

20 THE COURT: But the court doesn't say it's a path, the
21 court in its imminent wisdom says it might be a path which is
22 not wholly --

23 MR. BRODERICK: Right. And what it does say
24 unequivocally is you have to get a shot at class certification.
25 And that's the heart of it from our perspective.

1 MR. DOCKTERMAN: Yeah, that's one of the reasons why
2 different people read the case different ways, and the Court
3 will make --

4 THE COURT: You'll get your shot at class
5 certification but perhaps not with Mr. Johansen, who I hope is
6 out developing a hobby this weekend.

7 MR. DOCKTERMAN: Thank you very much, your Honor.

8 THE COURT: Anything else today?

9 MR. BRODERICK: No, your Honor.

10 MR. DOCKTERMAN: No, your Honor.

11 THE COURT: Thanks, everyone. Have a good weekend.

12 COUNSEL IN UNISON: Have a good weekend.

13 THE CLERK: All rise.

14 (The Court exits the courtroom and the proceedings
15 adjourned at 10:25 a.m.)
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C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Civil Action No. 15-12920-ADB, Johansen, et al. v. Liberty Mutual Group, et al.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

Date: 6/13/16